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ADMIRALTY.

1. The general rule in the admiralty, in cases of derelict, is to allow a moiety of the property saved to the salvors; but more or less will be allowed, according to the circumstances of each particular case. Sprague *v.* The Cargo of the Maria, 14.

2. Under the circumstances of the present case, the court decreed one moiety of the gross proceeds of the value of the property to the salvors, with full costs and expenses, the latter to be a charge exclusively upon the other moiety, *ib.*

3. Settlements, made with seamen in the absence of their proctors, how far upheld in the admiralty. Brooks *v.* Snell, 71.

4. Specie was shipped from Boston to Porto Cabello, for the purpose of purchasing a return cargo, and the vessel was obliged to put into Antigua, on account of a disaster, where the master, being destitute of funds, sold a part of the specie, for the purpose of making the repairs, and the vessel proceeded to her port of destination, and thence to Boston. It was admitted, that the specie, thus taken, should be paid for in general average, at Porto Cabello. *Held*, that the owners thereof were entitled to interest on the same from the time when they would have had the benefit of it at Porto Cabello, if it had been carried forward with the rest of the cargo. Shelton *v.* Brig Mary, 73.

5. In a libel for collision, the respondents, who are not creditors, are not in a position to question the validity of the title in the libellant, on the ground, that the conveyance to the libellant was made for the purpose of defeating creditors. Clapp *v.* Young, 111.

6. In a collision between two vessels, where it appears that one of them had neglected an ordinary and proper measure of prevention, the burden is on her to show, that the collision was not owing to her neglect, but would have equally happened, if she had performed her duty, *ib.*

7. Salvage; in this case, the salvors were allowed one half of the property saved, and the costs and expenses out of the other half. Johnson *v.* Certain goods, 118.

8. In a libel for a marine tort, the libellant must set forth, in a distinct allegation, each separate and distinct wrong on which he intends to rely, and for which he claims damages. Pettingill *v.* Dinsmore, 255.

9. If he intends to rely on general ill-treatment and oppression on the part of the master, in aggravation of damages, it must be propounded in a distinct allegation, to enable the master to take issue upon it in his answer, *ib.*

10. The proofs in the case must be confined to the matters that are put in issue by the libel and answer, *ib.*

11. When a master is prosecuted in the admiralty for punishing a seaman, he may be permitted, in justification, or in mitigation of damages, to show that the seaman was habitually careless, disobedient, or negligent in his conduct, *ib.*

12. But he must set forth such matter in a defensive allegation in his answer, in order to be admitted to this defence, *ib.*

13. The clause in the shipping articles of whale ships, which provides that, if any officer, after a fair trial of his ability, shall be judged by the master to be incompetent, is obligatory upon the parties. Morris *v.* Cornell, 304.

14. Whether such a clause varies the authority conferred by law — *quære*, *ib.*

15. A second mate, rightfully displaced from heading a boat in the whale fishery, is bound to perform other duty, and upon his refusal to do so, may be punished for disobedience, *ib.*

16. The right, given to seamen by the statute of 1840, to lay their complaints before the American consul in foreign ports, is one of great importance, which a court of admiralty will carefully guard, *ib.*

17. A second mate, who contumaciously refuses to perform duty, may be removed from the cabin to the forecastle, *ib.*

18. The second mate being commanded by the master to desist from swearing, and retorting on the master, that he had heard him swear, and stating the language, is no justification for the master violently assaulting and inflicting a blow upon the second mate, *ib.*

19. A seaman, during sickness occasioned by his own fault, is not entitled to wages, and is liable for the expenses of his subsistence; but not for the wages paid another man in his place. Johnson *v.* Huckins, 311.

20. The American ship Constitution, on a voyage from Havre to Charleston, S. C., having on board a box of bullion, foundered at sea. The box was taken on board the Danish brig Urania, bound to Copenhagen; and three days afterwards, while at sea, was transferred to the Constellation, an American ship, bound to the United States. *Held*,

that the bullion, while on board the Urania, was not in that peril required by law to make it the subject of salvage, and the taking it on board the Constellation was not a continuation of salvage service. Williams *v.* Box of Bullion, 363.

21. There being no agreement to transfer any right of the Urania to the Constellation, and the captain of the former having declared himself fully compensated, no such transfer is created by implication of law, *ib.*

22. *Held*, that the Constellation was entitled to a *quantum meruit* compensation, and might proceed therefor *in rem*. This right was not lost by delivery of the box of bullion to the master of the Constitution, *ib.*

23. It is not a deviation for a vessel to go out of her course three miles, to speak another at sea, on seeing a signal for that purpose; nor to delay three hours, to take from a foreign ship, bound to a foreign port, shipwrecked mariners of the United States, for the purpose of bringing them direct to the United States, *ib.*

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B.

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1. A conveyance of property by a bankrupt, *bona fide*, made more than two months before he filed his petition, for a fair and adequate consideration, is not void, although he may have been insolvent at the time; provided the other party had no notice of a previous act of bankruptcy, or of his intention to take the benefit of the bankrupt law. Dennett *v.* Mitchell, 16.

2. Where a partnership and the individual members thereof were declared bankrupts, it was *held*, that a creditor who presented a bill of exchange drawn by the firm and indorsed by one of the partners, was entitled to a dividend from the joint estate of the firm and the separate estate of the partner. *Aliter*, by the English law. In re Farnum, 21.

3. Whether the propriety of granting or refusing a motion for a new trial is a question, which, under the Bankrupt Act, can be adjourned into the Circuit Court, *Quære*. In re March, 67.

4. But if it can be, then all the evidence and circumstances of the whole case must be brought fully before the circuit court, in order to enable it to form an opinion upon the question, whether a new trial ought to be granted or not, *ib.*

5. The mere admission of incompetent testimony, or the mere misdirection of the court in a matter of law, is not of itself sufficient to establish, that a new trial ought to be granted, if in point of fact the verdict ought to be exactly what it has been upon the whole evidence and law properly applicable to the case, and the party moving for a new trial has suffered no injustice or prejudice thereby, *ib.*

6. *Held*, that the present case was too imperfectly stated to enable the circuit court to give any opinion upon the adjourned questions, inasmuch as the certified proceedings did not state what was the issue before the jury for trial, nor what the whole evidence was, which was submitted to the jury, *ib.*

7. On a note made payable "on demand after date with interest," there were demand and notice more than five years after date. *Held*, not within a reasonable time. In re Grant, 158.

8. The mere fact that the indorser of a note is a member of the firm by which it is made, will not excuse a demand and notice, although the firm were insolvent when the note was given, and the indorser knew that it was not paid, *ib.*

9. A member of an insolvent firm, in settling up their concerns, gave a note signed by the firm, payable to his own order "on demand after date with interest," and by him indorsed. No demand was made and notice given, until after five years from the date of the note. *Held*, that the private estate of the indorser, in bankruptcy, was not liable for the amount of the note, *ib.*

10. The objection to a bankrupt's discharge, on the ground that he has not made a full disclosure of his property, involves a charge of fraud and perjury, and the strictest proof is required. In re Pearce, 261.

11. *Held*, in the present case, that the bankrupt had not been guilty of such a fraudulent concealment of his property, within the meaning and intent of the bankrupt law, as ought to deprive him of his discharge, *ib.*

12. It is not a necessary and legal inference that a conveyance was made in contemplation of bankruptcy, merely because the debtor was insolvent at the time; but it must appear that the conveyance was made by the debtor in anticipation of breaking or failing in his business, of committing an act of bankruptcy, or of being declared bankrupt at his own instance, and intending to defeat the general distribution of his effects, *ib.*

13. A voluntary payment or transfer by an insolvent debtor, who is going on in his business, with a *bona fide* intention and expectation of saving himself from failing, and of paying his debts, is not a preference within the meaning of the law, *ib.*

14. But where a bankrupt was hopelessly and irretrievably insolvent, and had actually stopped business, his failing being notorious; and, when under the immediate apprehension of being committed to jail for debt by one of his creditors, he transferred a part of his property to another creditor without any request or demand on his part, and soon after became a voluntary bankrupt; it was *held*, that such a transfer was such an unlawful preference as ought to deprive the bankrupt of his discharge, *ib.*

15. This was the case of a petition by a bankrupt for his discharge, a majority of his creditors having objected thereto, the bankrupt obtained a trial by jury. The objections filed by the creditors were: 1. That the bankrupt had been guilty of fraud and of wilful concealment of his property and rights of property contrary to the provisions of the law. 2. That he had preferred some of his creditors contrary to the provisions of said act. 3. Because he wilfully omitted and refused to conform to the requisitions of said act. 4. Because he had admitted false or fictitious debts against his estate. The principal ground relied on by the creditors, was, that in March, 1842, all the stock of the bankrupt, except groceries and furniture, were attached by the Kinderhook Bank, when a receipt was given on a valuation of $900, and the suit is now pending. The receiptor took the property, and the bankrupt took no notice of it in the schedule annexed to his original petition. There was considerable testimony upon this and other points, the bankrupt taking the ground that he acted under a mistake as to his duty in this particular. Sprague J. in his charge instructed the jury, that they must be satisfied that the bankrupt *wilfully* concealed his property. If he acted in good faith, but under a mistake, his discharge ought not to be withheld. The jury returned a verdict in favor of the bankrupt. In re Wilson, 272.

16. *Held*, that a voluntary petition for a declaration of bankruptcy, which was presented on the third day of March, 1843, was too late, and that no order could be taken upon such petition other than to dismiss it. In re Howes, 297.

17. In cases founded on tort, and actions sounding merely in damages, as for a breach of contract of marriage, covenant and the like, where the claims are not provable under the bankruptcy, the certificate of discharge is no impediment to a judgment. So, it seems, if a plaintiff has a lien by attachment in any case and the lien is saved and protected by the bankrupt act, he may obtain a judgment notwithstanding the discharge of the defendant. In re Rowell, 298.

18. Payments, when they consist only of a part of their property, made by bankrupts, in order to bar their discharge, must be *in contemplation of bankruptcy* and must be *voluntary*, *ib.*

19. The question of costs in bankruptcy depends upon the particular circumstances of each case, *ib.*

20. *Held*, under the circumstances of this case, that the objections to the bankrupt's discharge were not sustained; but the court refused to subject the opposing creditors to costs, *ib.*

21. A creditor of a bankrupt by filing a bill in equity against the bankrupt and his trustee for discovery and relief, before the petition of the debtor to be declared a bankrupt, does not acquire a lien or right of priority against the assets in the hands of the trustee that is protected under the last proviso of the second section of the bankrupt law. Smith, Assignee, *v.* Gordon, 313.

22. If the suit is pending at the time of the petition in bankruptcy, the assignee, when appointed, has a right to take upon himself the control and management of the suit for the benefit of the general creditors, *ib.*

23. If he elects to prosecute the suit for the benefit of the estate, it must be on condition of indemnifying the plaintiff in the suit for all his reasonable expenses incurred in prosecuting it, and taking on himself the responsibility of costs, *ib.*

24. If he elects not to take the suit into his own hands, and allows the plaintiff in equity to proceed to a final decree, such decree will give the plaintiff a lien or right of priority against the property that is within the saving of the proviso, *ib.*

25. Though all the property and rights of property of the bankrupt are by operation of law transferred to and vested in the assignee by virtue of the decree of bankruptcy, the assignee is not bound in all cases to take possession of every part, *ib.*

26. If any of the property or any right of property would be rather a burden than a benefit to the estate, the assignee will not ordinarily be bound to take possession of it, *ib.*

27. If he elects not to take, the possessory right remains in the bankrupt, and is good against all the world but his assignee, *ib.*

28. The assignee's right of election must be exercised within a reasonable time. If he lies by for an unreasonable time and allows third persons in the prosecution of their legal rights to acquire an interest or lien on the property, he will be held by such delay to have made his election not to take, *ib.*

29. Assignees in bankruptcy, except in cases of fraud, take only such rights and interests as the bankrupt himself had, and could himself claim and assert at the time of his bankruptcy; and they are affected with all the equities, which would affect the bankrupt himself, if he were asserting those rights and interests. Mitchell, assignee, *v.* Winslow, 347.

30. To make a grant or assignment valid at law, the thing which is the subject of it, must have an existence, actual or potential, at the time of such grant or assignment; a mere possibility is not assignable, *ib.*

31. But courts of equity support assignments, not only of choses in action, but of contingent interests and expectations, and also of things which have no present actual potential existence, but rest in mere possibility only, *ib.*

32. Where a mortgage or a lien is created on chattels by contract, it is competent for the parties to agree, that the possession and use thereof shall be retained by the mortgagor until the breach of the condition, or by the debtor until the creditor shall assert his rights against it as a security for the debt, *ib.*

33. A and B being engaged, in 1839, in the manufacture of cutlery, borrowed of C a sum of money, payable in four years, with interest semi-annually, and on the same day gave him a deed of all the machinery in their manufactory, with all the tools and implements of every kind thereunto belonging and appertaining, together with all the tools and machinery for the use of the said manufactory, which they might at any time purchase for four years from that date, and also all the stock which they might manufacture or purchase during the said four years. On the 26th of August, 1842, A and B filed their petition to be declared bankrupts, and subsequently were so declared, and an assignee was appointed. On July 16, the agent of C took possession, for breach of the conditions of the mortgage, of the property, including the machinery, &c., which were in the possession of the factory when the mortgage was made, and also machinery, tools and stock in trade, which had been made and purchased after the execution of the mortgage. On petition of the assignee in bankruptcy of A and B for an order of court authorizing him to take possession, it was held; —

34. That the mortgage and the possession taken on July 16, 1842, constituted such a lien in favor of the mortgagee to the property acquired subsequent to the time of executing the mortgage, as is protected under the provision in the second section of the bankrupt act, *ib.*

35. That such stipulations in a mortgage, in regard to property subsequently acquired, protect such property from other creditors of the mortgagor, *ib.*

36. As to the effect at law of such stipulations, in a controversy between a first and second mortgagee, as to property acquired and *in esse* after the execution of the first mortgage and before the execution of the second, both the mortgages being bona fide purchasers for a valuable consideration, and the second mortgagee having no notice of the prior incumbrance, — *quære*, *ib.*

37. The doctrine that in law there is no fraction of a day, is a mere legal fiction, and is true only *sub modo*, and in a limited sense, where it will promote the right and justice of the case. In re Richardson, 392.

38. By the constitution of the United States, the very time of the approval of a public law, constitutes the time as to when the law is to have its effect, and then to have its effect prospectively and not retrospectively, *ib.*

39. A petition for the benefit of the bankrupt act was filed in the district court on the third day of March, 1843, about noon; the act of the third of March, 1843, repealing the bankrupt act, passed congress, and was approved by the president, late in the evening of the same day. *Held*, that the court had jurisdiction of the petition at the time when it was filed and acted upon, and that it had full jurisdiction to entertain all proceedings thereon, to the close thereof, according to the provisions of the bankrupt act. [See Matter of Howes, *ante*, 297.] *ib.*

40. A bill of sale of one half of a vessel, as collateral security for a debt, with a provision that the vendors may keep possession of the vessel, and use her for their own benefit, until default of payment, is valid, as an immediate conditional sale. In re McLellan, 440.

41. Delivery of possession, to a purchaser, of a moiety of a vessel, when in the possession of the other part owner, is not, in general, indispensable, *ib.*

42. As between the vendor and vendee, notice to the part owner in possession is not necessary, *ib.*

43. By the Revised Statutes of Massachusetts, it is not necessary, as between the parties themselves, that a mortgage of personal property should be recorded, *ib.*

44. The assignee in bankruptcy, even in cases of fraud, stands in no better situation than the bankrupts themselves, *ib.*

45. The fact that one of the vendors made oath at the custom-house, subsequent to the bill of sale, that the vessel belonged to him and his partner, cannot affect the rights of the vendee, *ib.*

46. The bankrupts, some months previous to their bankruptcy, conveyed by a bill of sale, as collateral security to a debt of $2000, one half of a vessel, of which the other half was owned by the master, and agreed to assign all future policies of insurance thereon, as further security for the same debt, which was done; it being agreed that the vendors might use the vessel for their own benefit, until default of payment. The bill of sale was not recorded. The vessel, at the time the bill of sale was made, was at sea, in the possession of the master. Between that time, and the filing of the petition for the benefit of the bankrupt law, by the vendors, the vessel came once to Boston, the place of business and residence of the vendors, and twice to Bath, the place of business and residence of the master, but the vendees did not take possession. Five days before the filing of the petition, they sent notice to the master of the bill of sale. The said moiety of the vessel having been sold, by direction of the assignee, it was *held*, that

the proceeds should be paid to the vendees, *ib.*

47. A check on a bank, payable at a future day, is not an inland bill of exchange, and requires no notice of dishonor. In re Brown, 508.

48. Where a petitioner for a decree of bankruptcy set forth in his schedule only two debts, one of which was a judgment recovered against him on a bastardy process, and the other was a judgment in favor of the father for the seduction of his daughter; it was *held*, that the petition should be dismissed. In re Cotton, 546.

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